

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Wingfield Engineering Company  
Goodwater, Coosa Co., ALABAMA**

**USEPA ID NUMBER ALR000046698**

CONSENT ORDER NO. 10-XXX-CHW

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and Wingfield Engineering Company, Inc. (hereinafter “Wingfield”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act of 1978 (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. Wingfield Engineering Company (hereinafter “Wingfield”) operates a custom controls manufacturing and fabricating facility in Goodwater, Coosa County, Alabama, that is assigned EPA Identification Number ALR000046698.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, and 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

4. On October 22, 2009, Department personnel conducted an on-site compliance evaluation inspection (hereinafter "CEI") of Wingfield. The CEI and a review of Wingfield's compliance showed the following:

- A. Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must determine if that waste is a hazardous waste. Wingfield did not perform a hazardous waste determination on the contents of paint cans that were observed in a burn pile located at the rear of the facility.
- B. Pursuant to ADEM Admin. Code r. 335-14-3-.01(3)(a), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Department. Wingfield did not obtain an EPA ID number prior to storing hazardous waste onsite.
- C. Pursuant to ADEM Admin. Code r. 335-14- 3-.03(5)(c)1.(ii), a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste as listed in 335-14-2-.04(4)(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 335-14-3-.03(5)(a) provided he marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers. Two 55-gallon satellite accumulation area (SAA) drums located next to the painting area were not labeled with the words "Hazardous Waste" or with other words describing the contents.
- D. Pursuant to ADEM Admin. Code r. 335-14-6-.09(4)(a) made applicable by ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(i), a container holding hazardous waste must always be closed during storage, except when it is necessary to

add or remove waste. One 55-gallon SAA drum located next to the painting area was not closed; hazardous waste was not being added or removed from the drum at the time of inspection.

- E. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)2., a generator who accumulates either hazardous waste listed in 335-14-2-.04(4)(e) or acutely hazardous waste in excess of the amounts listed in 335-14-3-.03(5)(c)1. at or near any point of generation must, with respect to the initial amount of waste (55 gallons of hazardous waste or one quart of acutely hazardous waste), comply within three days with 335-14-3-.03(5)(a) or other applicable provisions of Division 335-14. During the three-day period, the generator must continue to comply with 335-14-3-.03(5)(c)1.(i) and (ii). The generator must mark the container holding the initial amount of hazardous waste with the date the initial amount was reached. Two 55-gallon containers were observed in a SAA located next to the painting area. One of the containers was full and the other was nearly full. An accumulation start date had not been marked on either SAA container.
- F. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)3., made applicable by ADEM Admin Code r. 335-14-3-.03(5)(d)5., a Small Quantity Generator may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that while being accumulated on-site each container and tank is labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste number. Six 55-gallon HW drums located in the 180-day hazardous waste storage area were not labeled or marked with the words "Hazardous Waste" and the EPA hazardous waste number.
- G. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)2. made applicable by ADEM Admin. Code r. 335-14-3-.03(5)(d)5., a Small Quantity Generator may accumulate hazardous waste on-site for 180 days or less without a permit or

without having interim status provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container Wingfield accumulated six drums of hazardous waste in the 180-day hazardous waste storage area, without obtaining a permit, and without marking the containers with their accumulation start date(s).

H. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(g), a Small Quantity Generator who accumulates hazardous waste in quantities exceeding 6000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 335-14-5, 335-14-6, and 335-14-8 unless he has been granted an extension to the 180-day period. Seven 55-gallon hazardous waste drums located in the 180-day hazardous waste storage area were marked with an accumulation start date of "03/12/09". These containers had been accumulated onsite for approximately 217 days. The 270 day provision of this rule does not apply to Wingfield and no extension was granted to Wingfield.

I. Pursuant to ADEM Admin. Code r. 335-14-6-.02(6)(d) as made applicable by ADEM Admin. Code r. 335-14-6-.09(5), made applicable by ADEM Admin. Code r. 335-14-3-.03(5)(d)2., the owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, the number of hazardous waste containers present, a notation of the observations made, and the date and nature of any repairs or other remedial actions. Wingfield did not maintain on site documentation of weekly inspections of the 180-day hazardous waste storage area.

- J. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(iii), employees must complete an initial training program in hazardous waste management within six months after the date of their employment or assignment to a new position. The training program must be designed to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies. Wingfield did not provide hazardous waste management training for all employees who handle hazardous waste.
- K. Pursuant to ADEM Admin. Code r. 335-14-6-.03(8)(b) made applicable by ADEM Admin. Code r. 335-14-3-.03(5)(d)5., documentation of compliance with 335-14-6-.03(8)(a) must be maintained at the facility. Wingfield did not maintain onsite documentation of compliance with ADEM Admin. Code r. 335-14-6-.03(8)(a) indicating arrangements made with local police (or county sheriff) department, local fire department, emergency response contractors, local hospitals, and State and local emergency response agencies to familiarize them with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility and possible evacuation routes.
- L. Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)6.(ii), the generator must post the following information next to the telephone: the name and telephone number of the emergency coordinator; location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the generator has a direct alarm. Wingfield did not post the required emergency response information next to a phone.

5. As a result of this CEI, Wingfield was issued a Notice of Violation (NOV), dated November 16, 2009, which cited violations of the hazardous waste regulations that were discovered during the inspection.

6. On December 16, 2009, Mr. Mark Wingfield, Wingfield's Environmental Manager, requested an informal conference to discuss Wingfield's response to the Department's November 16, 2009 NOV. That meeting was held on December 17, 2009. In addition to verbalizing Wingfield's response, Mr. Wingfield provided a written response. Based on the information provided, Wingfield appears to have adequately addressed the violations cited in the aforementioned NOV, except for the violations listed in subparagraphs 4(A), and 4(H) above.

7. Wingfield consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein. Wingfield neither agrees nor disagrees with the Stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMMMA, has consented to the terms of this Consent Order.

8. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### **Winfield Contentions**

**Contention 1:** In regard to Item 4a, Wingfield Engineering contends that the cans observed in the burn pile were empty and were in the burn pile for the purpose of removing existing labeling from the empty cans prior to disposal into the scrap metal dumpster as requested by the scrap metal vendor.

**Contention 2:** Wingfield Engineering has always acted in an environmentally responsible manner. Up until 2009, Wingfield had been considered a Conditionally Exempt Small Quantity Generator (CESQG) of hazardous wastes and complied with all applicable regulations required of a CESQG. In early 2009, due to an increased workload, coupled with the type of work performed, Wingfield generated additional

paint related waste materials raising the level of generator status from a CESQG to a Small Quantity Generator (SQG) of hazardous wastes. Wingfield Management depended on current waste vendors to assist the organization in any additional regulatory requirements that occurred as a result of the change in generator status. Due to failure of management to correctly understand the new requirements coupled with poor advice from our waste vendors, Wingfield did not comply with all applicable storage and paperwork related regulations.

While being non-compliant with some of the regulatory issues associated with the change in generator status, at no time did Wingfield ever perform any activity that ever endangered the environment. All wastes generated by the facility were properly contained and shipped to properly permitted facilities for disposal. At no time was any waste material generated by Wingfield Engineering ever improperly disposed.

**Contention 3:** Wingfield has corrected any and all issues associated with this consent order and has a system in place to assure ongoing compliance into the future.

9. Wingfield neither admits nor denies the Department's contentions, and the Department neither admits nor denies Wingfield's contentions.

10. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

11. In arriving at this civil penalty, the Department has considered the following:
- A. SERIOUSNESS OF THE VIOLATION: The Department is not aware of any irreparable harm to the environment resulting from the alleged violations.
  - B. THE STANDARD OF CARE: Wingfield did not exhibit a standard of care commensurate with applicable regulatory standards.
  - C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Wingfield stored seven fifty-five gallon containers of hazardous waste beyond the allotted time frame (180 days); however, the magnitude of any cost savings and resulting economic benefit, if any, is minimal.
  - D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Upon discovery of the violations, Wingfield took corrective actions to address the violations and to prevent their recurrence.
  - E. HISTORY OF PREVIOUS VIOLATIONS: Based on Department records, Wingfield has no other historic record of violations of the AHWMMMA or ADEM Admin. Code div. 335-14.
  - F. THE ABILITY TO PAY: Wingfield has not alleged an inability to pay the civil penalty.
  - G. The civil penalty is summarized in Attachment A.

### **ORDER**

THEREFORE, without admitting that it has violated any statutes or regulations, Wingfield, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Wingfield agree to enter into this Consent Order with the following terms and conditions:



A. Wingfield agrees to pay to the Department a civil penalty in the amount of \$12,900 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Wingfield agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Wingfield's name and address and the ADEM Administrative Order Number of this action.

C. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Wingfield agrees to comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.) and the regulations promulgated thereto.

D. That, immediately upon the effective date of this Consent Order, Wingfield agrees to provide written notification to the Department of the closure of its hazardous waste storage area. The notification should include the following:

1. Wingfield's legal name, physical address, and EPA Identification Number;
2. The date closure is expected to begin, and a timeframe for completing closure activities (not to exceed 180 days);
3. A description of the unit to be closed, and a site diagram identifying the unit;
4. The procedures to be used for closure;

5. The type and maximum volume of hazardous waste stored in the unit at any time and the associated EPA hazardous waste numbers;
6. The type and amount of hazardous waste expected to be stored in the unit at any time closure activities are expected to begin;
7. The condition of the unit at the time of notification; and
8. Plans for hazardous waste determinations on, and proper management and disposal of, stored wastes, unit components, investigation derived wastes, and decontamination wastes.

E. That, within forty-five days after completion of closure, Wingfield agrees to provide a written report documenting the procedures used to comply with ADEM Admin. Code rs. 335-14-3-.03(5)(a)5., 335-14-6-.09(9), 335-14-6-.10(8), 335-14-6-.23(6), and/or 335-14-6-.30(3) along with the applicable fee specified in Fee Schedule G (Hazardous Waste Generator Closure Certification) of ADEM Admin. Code r. 335-1-6-.07.

F. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

H. Wingfield agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, Wingfield agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Wingfield also agrees that in any action

brought by the Department to compel compliance with the terms of this Agreement, Wingfield agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Wingfield, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Wingfield) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Wingfield, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Wingfield agrees to not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

K. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Wingfield does hereby waive any hearing on the terms and conditions of this Consent Order.

L. The parties agree that this Consent Order shall not affect Wingfield's obligation to comply with any Federal, State, or local laws or regulations.

M. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

P. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Wingfield of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Wingfield Engineering Company

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Alan W. Wingfield  
(Signature of Authorized Representative)

\_\_\_\_\_  
John P. Hagood  
Director

ALAN W. WINGFIELD  
(Printed Name)

PRESIDENT  
(Printed Title)

4/22/2010  
(Date Signed)

\_\_\_\_\_  
(Date Executed)

# ATTACHMENT A

## Penalty Calculation Worksheet

**Wingfield Engineering**

**ALR000046698**

**Goodwater, AL**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Failure to perform a hazardous waste (HW) determination.	1	\$1,500	\$0	\$0
Failure to obtain an AHWMMMA permit for storage	1	\$10,000	\$0	\$0
Failure to mark containers with the words "hazardous waste"	2	\$200	\$0	\$0
Failure to obtain an EPA ID number	1	\$100	\$0	\$0
Failure to mark HW drums with the accumulation start date	2	\$200	\$0	\$0
Failure to develop and implement a HW management training program	1	\$500	\$0	\$0
Failure to document arrangements with local authorities	1	\$100	\$0	\$0
Failure to post emergency numbers next to telephone	1	\$100	\$0	\$0
Failure to perform weekly inspections for the HW storage areas	1	\$100	\$0	\$0
Failure to close a HW storage container	1	\$100	\$0	\$0
<b>Totals:</b>	12	\$12,900	\$0	\$0

**Economic Benefit:** \$0  
**Mitigating Factors:** \$0  
**Ability to Pay:** \$0  
**Other Factors:** \$0

**Civil Penalty:** **\$12,900**

### Footnotes

\* See the "Findings" of the Order for a detailed description of each violation and the penalty factors.